

CHAPTER ELEVEN

FINANCIAL SERVICES

Article 1101: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) financial institutions of the other Party;
 - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (c) cross-border trade in financial services.
2. Chapters Eight (Investment) and Nine (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.
 - (a) Articles 813 (Investment - Transfers), 812 (Investment - Expropriation and Compensation), 816 (Investment - Special Formalities and Information Requirements), 815 (Investment - Denial of Benefits), 809 (Investment - Health, Safety and Environmental Measures) and 912 (Cross-Border Trade in Services - Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

- (b) Section B of Chapter Eight is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 813 (Investment - Transfers), 812 (Investment - Expropriation and Compensation), or 815 (Investment - Denial of Benefits) as incorporated into this Chapter, or claims pursuant to subparagraph 1(c) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(c) of Article 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) that a Party has breached a legal stability agreement.
- (c) Article 911 (Cross-Border Trade in Services - Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 1105.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
- (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1101.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

5. Annex 1101.5 sets out, for greater certainty, certain understandings between the Parties regarding financial services measures.

Article 1102: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in paragraph 1 of Article 1105, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers, of the Party of which it forms a part.

5. Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.

Article 1103: Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors of the other Party in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.
2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
 - (a) accorded unilaterally;
 - (b) achieved through harmonization or other means; or
 - (c) based upon an agreement or arrangement with the non-Party.
3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.
4. Where a Party accords recognition of prudential measures under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

Article 1104: Right of Establishment

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.
2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 1102, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.
3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.
4. Subject to Article 1102, a Party may, in exceptional circumstances, prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.
5. For the purpose of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of that Party.

6. For the purpose of this Article, “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

Article 1105: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 1105.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article so long as such definitions are not inconsistent with the obligation of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 1106: New Financial Services

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt new statutes or modify existing statutes.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. Nothing in this Article prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

Article 1107: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 1108: Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, natural persons residing in the territory of the Party, or a combination thereof.

Article 1109: Non-Conforming Measures

1. Articles 1102, 1103, 1104 and 1108 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the level of the:
 - (i) national government, as set out in Section I of its Schedule to Annex III, or
 - (ii) sub-national government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1104 and 1108.

2. Article 1105 does not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at the level of the:
 - (i) national government, as set out in Section I of its Schedule to Annex III, or
 - (ii) sub-national government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article 1105.

3. Articles 1102, 1103, 1104, 1105 and 1108 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Section III of each Party's Schedule to Annex III sets out certain specific commitments by that Party.

5. Where a Party has set out a reservation to Article 803 (Investment - National Treatment), 804 (Investment - Most-Favoured-Nation Treatment), 903 (Cross-Border Trade in Services - National Treatment) or 904 (Cross-Border Trade in Services - Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 1102 or 1103, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

Article 1110: Exceptions

1. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons,¹ including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under such provisions.

¹ The term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

2. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 807 (Investment - Performance Requirements) with respect to measures covered by Chapter Eight (Investment), Article 813 (Investment - Transfers) or Article 912 (Cross Border Services - Transfers and Payments).

3. Notwithstanding Article 813 (Investment - Transfers) and Article 912 (Cross Border Services - Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services, as covered by this Chapter.

Article 1111: Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Each Party shall, to the extent practicable:

- (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and

- (c) allow reasonable time between publication of final regulations and their effective date,

and these requirements shall replace those set out in Article 1901 (Transparency - Publication).

4. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

7. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

Article 1112: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in or have access to a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 1102, 1103, 1104, 1111 and other relevant Articles of this Chapter by such self-regulatory organization.

Article 1113: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 1114: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee (the “Committee”). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1114.
2. In accordance with Article 2001 (Administration of the Agreement - The Joint Commission), the Committee shall:
 - (a) supervise the implementation of this Chapter and its further elaboration;

- (b) consider issues regarding financial services that are referred to it by a Party; and
 - (c) participate in the dispute settlement procedures in accordance with Article 1117.
- 3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 1115: Consultations

- 1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
- 2. Officials from the authorities specified in Annex 1114 shall participate in the consultations under this Article.
- 3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party's territory.
- 4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations pursuant to paragraph 3 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding the sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 1116: Dispute Settlement

1. Chapter Twenty-One (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 1115 with respect to a measure or matter constitute consultations under Article 2104 (Dispute Settlement - Consultations), unless the Parties otherwise agree. If the matter has not been resolved within 45 days after commencing consultations under Article 1115 or 90 days after the delivery of the request for consultations pursuant to Article 1115, whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures shall replace Article 2108 (Dispute Settlement - Panel Selection):

- (a) the panel shall be composed of three members;

- (b) each Party shall, within 30 days of the delivery of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment. If a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the panelist not yet appointed;
- (c) the Parties shall endeavour to agree on the appointment of the third panelist who shall chair the panel and, unless the Parties agree otherwise, shall not be a national of either Party. If the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;
- (d) subparagraphs (b) and (c) shall apply *mutatis mutandis* where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date a panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist on panels constituted for disputes arising under this Chapter shall have the qualifications required by Article 2107 (Dispute Settlement - Qualification of Panelists) with the exception of subparagraph 1(d) of that Article. In addition, they shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measures in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1117: Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section II of Chapter Eight (Investment) and the respondent invokes an exception under Article 1110, on request of the respondent the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1110 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may, within 10 days thereafter, request the establishment of an panel under Article 2106 (Dispute Settlement - Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article 1116. Further to Article 2110 (Dispute Settlement - Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days after the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1118: Definitions

For purposes of this Chapter:

Appointing Authority means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
 - (i) Life,
 - (ii) Non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
- (i) Guarantees and commitments;

- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
 - (i) money market instruments (including checks, bills, certificates of deposits),
 - (ii) foreign exchange,
 - (iii) derivative products including, futures and options,
 - (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,
 - (v) transferable securities,
 - (vi) other negotiable instruments and financial assets, including bullion,
- (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

- (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 847 (Investment - Definitions), except that, with respect to “loans” and “debt securities” referred to in that Article:

- (a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

- (c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and
- (d) a loan granted by or debt security owned by a cross-border financial service supplier, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 847 (Investment - Definitions);

investor of a Party means “investor of a Party” as defined in Article 847 (Investment - Definitions);

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 105 (Initial Provisions and General Definitions - Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity shall not be considered a designated monopoly or a state enterprise for the purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises); and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises).

Annex 1101.3(a)

Understanding Concerning Subparagraph 3(a) of Article 1101

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or supplying in its territory the activities and services described in subparagraph 3(a) of Article 1101. Further, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures relating to those contributions with respect to which such activities or services are exclusively conducted or supplied.
2. For greater certainty, with respect to the activities or services referred to in subparagraph 3(a) of Article 1101, it shall not be inconsistent with this Chapter for a Party to:
 - (a) designate, formally or in effect, a monopoly, including a financial institution, to conduct or supply some or all activities or services;
 - (b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;
 - (c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services conducted or supplied by an entity other than the government, a public entity, or a designated monopoly; and

- (d) require that some or all activities or services be conducted or supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in subparagraph 3(a) of Article 1101.

Annex 1101.5

Understanding Regarding Financial Services Measures

1. Nothing in Article 1106 prohibits a Party from requiring the issuance of a decree, resolution, or regulation by the executive branch, regulatory agencies, or central bank, in order to authorize new financial services not specifically authorized in its law.
2. With respect to cross-border trade in financial services, and without prejudice to other means of prudential regulation, a Party may require the authorization of cross-border financial service suppliers of the other Party and of financial instruments.
3. A Party may apply solvency and integrity requirements to branches of insurance companies of the other Party established in its territory, including measures requiring that capital assigned to a branch and technical reserves be effectively brought into the Party's territory and converted into local currency, in accordance with the Party's law.

Annex 1105

Cross-Border Trade

Canada

Insurance and Insurance-Related Services

1. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and
 - (ii) goods in international transit; and
- (b) reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service.

2. Canada's commitments on cross-border insurance and insurance-related services apply only where the activities of a Peruvian entity are not subject to the *Insurance Companies Act*, 1991, c. 47 (that is, the Peruvian entity is not in itself or through an agent insuring in Canada a risk).

Banking and Other Financial Services (excluding insurance)

3. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraphs (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

- (a) the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service; and
- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

4. Canada's commitments on cross-border trade of banking and other financial services (excluding insurance) are made on the basis that neither the foreign bank nor one of its affiliates, if subject to the *Bank Act*, 1991, c. 46, maintains a financial establishment in Canada.

Peru

Insurance and insurance-related services

1. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118 with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) consultancy, actuarial, risk assessment and claim settlement services;
- (d) insurance intermediation, such as agency and brokerage, as referred to in subparagraph (c) of the definition of financial service in Article 1118, of insurance of risks related to those items listed in subparagraphs (a) and (b).

2. Paragraph 1 of Article 1105 applies with respect to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 1118 with respect to services listed in paragraph 1.

3. Peru's commitment in paragraphs 1 and 2 with regard to the supply and intermediation of insurance of risks listed in subparagraph 1(a) of this Annex shall become effective two years after the entry into force of this Agreement or when Peru has adopted and implemented the necessary modifications to its relevant legislation, whichever occurs first.

Banking and other financial services (excluding insurance)

4. Paragraph 1 of Article 1105 applies only with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service in Article 1118,² subject to prior authorization from the relevant regulator, as required, and advisory and other auxiliary financial services,³ excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 1118.⁴

² Where the financial information or financial data processing referred to in this paragraph involves personal data, the treatment of such personal data shall be in accordance with Peru's law regulating the protection of such data.

³ Advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 1118.

⁴ A trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

Annex 1111

Transparency

1. The Parties recognize that the implementation by Peru of the obligations referred to in paragraphs 3 and 8 of Article 1111 may require legislative and regulatory changes, including the establishment of systems and procedures for compliance with such obligations.
2. Peru shall implement the obligations specified in paragraph 1 not later than 18 months after the date of entry into force of this Agreement, or at such time as the equivalent obligations contained in paragraphs 3 and 11 of Article 12.11 of the *United States - Peru Trade Promotion Agreement*, done in Washington on 12 April 2006, are implemented, whichever occurs first.

Annex 1114

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

- (a) for Canada, the Department of Finance of Canada; and
- (b) for Peru, the Ministry of Economy and Finance, in coordination with financial regulators.